

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH  
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

- A. The HOUSING TRUST FUND CORPORATION ("HTFC") is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of this agreement and at no additional cost to HTFC, to fully comply and cooperate with HTFC in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by this Agreement.

**II. Contract Goals**

- A. For purposes of this Agreement, HTFC hereby establishes a goal of, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Agreement and achieving the Contract Goals established in section II-A Project Recipient should reference the directory of New York State Certified MBWEs found at the following internet address:  
[http://www.empire.state.ny.us/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp).

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Agreement.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Agreement. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in this Agreement, such a finding constitutes a breach of contract and Contractor shall be liable to HTFC for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and its subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor and its subcontractors shall submit an EEO policy statement to HTFC with its MWBE Utilization Plan in accordance with HTFC's Office of Fair Housing and Equal Opportunity ("OFHEO") procedures. If Contractor or its subcontractors do not have an existing EEO policy statement, a model statement can be found on HTFC's website.
  3. Contractor's EEO policy statement shall include the following language:
    - a. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal

employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- c. The contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- d. The contractor will include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Agreement.

#### C. Staffing Plan

To ensure compliance with this section Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractor shall complete the Staffing plan form and submit it within 60 days of this Agreement.

#### D. ADM 136 Monthly Employment Utilization Report ("Monthly Report")

1. Once a contract has been awarded and during the term of the construction, Contractor and its subcontractors are responsible for updating and providing notice to HTFC of any changes to the ADM 136. This information is to be prepared monthly and submitted on a quarterly basis to report the actual workforce utilized on the project by the specified categories listed including ethnic background, gender and Federal occupational categories.
2. Separate forms shall be completed by each subcontractor performing work on the project.
3. In limited instances it may not be possible to separate out the workforce utilized on the project from subcontractor's total workforce. When a separation can be made, subcontractor shall submit the ADM 136 and indicate that the information provided related to the actual workforce utilized on this project. When the workforce to be utilized on the project cannot be separated out from subcontractor's total workforce, subcontractor shall submit the ADM 136 and indicate that the information provided is subcontractor's total workforce during the subject time frame, not limited to work specifically for this project.

- E. Contractor and its subcontractor's shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination

provisions. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an ADM- 095B MWBE Utilization Plan either prior to, or at the time of, the execution of this Agreement.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this project pursuant to the prescribed MWBE goals set forth in section II-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Agreement. Upon the occurrence of such a material breach, HTFC shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **V. Waivers**

- A. For Waiver Requests Contractor should refer to OFHEO's Good Faith Efforts Guide on the HTFC website
- B. If Contractor, after making good faith efforts, is unable to comply with MWBE goals, Contractor may submit a Request for Waiver documenting good faith efforts by Contractor to meet such goals. Requests are to be in writing and directed to Wanda Graham, Director, Office of Fair Housing and Equal Opportunity, NYS Homes and Community Renewal, 641 Lexington Avenue, 5<sup>th</sup> Floor, New York, New York 10022.
- C. If HTFC, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, HTFC may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form \_\_\_\_\_) to HTFC by the 10<sup>th</sup> day following each end of quarter over the term of the Agreement documenting the progress made towards achievement of its MWBE goals.

**VII. Liquidated Damages - MWBE Participation**

- A. Where HTFC determines that Contractor is not in compliance with the requirements of this Agreement and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to HTFC liquidated damages.
  
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  1. All sums identified for payment to MWBEs had Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under this Agreement.
  
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by HTFC, Contractor shall pay such liquidated damages to HTFC within sixty (60) days after they are assessed by HTFC unless prior to the expiration of such sixtieth day, Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of HTFC.

**Housing Trust Fund Corporation  
Technical Assistance Contract**

**DESIGNATION OF DEPOSITORY FOR DIRECT DEPOSIT OF HTFC FUNDS**  
**SECTION I (to be completed by Contractor)**

Contractor	Contract Title
Contractor Address	Contact Person (Name & Phone #)

The \_\_\_\_\_  
(Name of Contractor's Financial Institution)  
has been designated as the depository for all funds to be received from the Housing Trust Fund Corporation (HTFC) resulting from an award under the above Contract.

I certify that all HTFC funds shall be deposited in an account at the above-referenced financial institution, which is covered by federal deposit insurance.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Authorized Representative  
(Typed or Printed Legibly)

\_\_\_\_\_  
Title

**SECTION II (to be completed by Financial Institution)**

Name of Financial Institution
Address

Routing Number \_\_\_\_\_

Account Number \_\_\_\_\_

Account Type      Checking Account       Savings Account

The account identified above has been established with this bank. All necessary documentation, including a power of attorney where necessary, which will enable this bank to receive funds directly from the Housing Trust Fund Corporation without any endorsement by the payee, has been received and is in this depository's custody. Immediately upon deposit of HTFC funds in the above account, we will notify the Recipient and subsequently provide a copy of the documentation of deposit.

\_\_\_\_\_  
Signature of Authorized Bank Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Authorized Bank Officer

\_\_\_\_\_  
Telephone Number